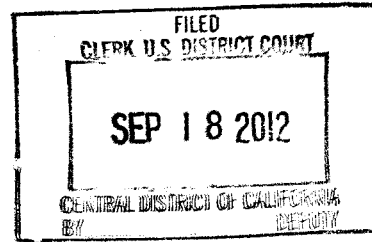


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Attorneys for Defendant  
THE WELLPOINT COMPANIES, INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSUE TALAMANTEZ, an individual,  
on behalf of himself and on behalf of all  
persons similarly situated,,

Plaintiff,

v.

THE WELLPOINT COMPANIES, INC.,  
a Indiana Corporation; and Does 1  
through 50, Inclusive,,  
Defendants.

Case No.

**CV12-08058** RGH(JLx)

**DEFENDANT THE WELLPOINT  
COMPANIES, INC.'S NOTICE OF  
REMOVAL**

**TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HIS  
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Defendant The WellPoint Companies, Inc.  
("Defendant") hereby removes the above-referenced action from the Superior  
Court of the State of California for the County of Los Angeles to the United States  
District Court for the Central District of California, pursuant to 28 U.S.C. §§ 1331  
and 1441 (federal question jurisdiction) and 28 U.S.C. Section 1332(d)(2)  
(diversity jurisdiction).

## **PARTIES AND CLAIMS**

1  
2 1. Plaintiff Josue Talamantez ("Plaintiff") alleges that he worked for  
3 Defendant in a non-exempt hourly position within the last four years. He purports  
4 to bring a class action on behalf of a putative class which he defines as follows:  
5 "all individuals who are or previously were employed by Defendant The WellPoint  
6 Companies, Inc. in California as non-exempt employees who received bonus  
7 compensation payments during the same pay period in which they were paid  
8 overtime compensation (the "CALIFORNIA CLASS") at any time during the  
9 period beginning four (4) years prior to the filing of the Complaint ." He also  
10 purports to bring a class action on behalf of a putative sub-class which he defines  
11 as follows: "all members of the CALIFORNIA CLASS who received bonus  
12 compensation payments during the same pay period in which they worked  
13 overtime hours . . . at any time during the period three (3) years prior to the filing  
14 of the complaint ."

15 2. Plaintiff alleges five causes of action in the Complaint: (1) Unfair  
16 Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure  
17 to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (3) Failure  
18 to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (4)  
19 Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202,  
20 and 203; and (5) Failure to Pay Overtime Compensation in Violation of 29 U.S.C.  
21 §§ 201, *et seq.*

## **PROCEDURAL HISTORY**

22  
23 3. The Complaint in this action was filed on August 3, 2012 in the  
24 Superior Court of the State of California for the County of Los Angeles and was  
25 assigned Case No. BC489001. A true and correct copy of the Summons and  
26 Complaint are attached hereto as Exhibit A. The Summons and Complaint was  
27 served on Defendant on August 20, 2012, along with additional court documents  
28

1 attached as Exhibit B. Plaintiff served a Minute Order and Initial Status  
2 Conference Order (Complex Litigation Program) dated August 24, 2012, attached  
3 as Exhibit C, on Defendant on September 7, 2012. The Summons, Complaint,  
4 Civil Case Cover Sheet, Civil Case Cover Sheet Addendum and Statement of  
5 Location, Notice of Case Assignment - Class Action Cases, ADR Information  
6 Package, Stipulation forms, Minute Order and Initial Status Conference Order  
7 (Complex Litigation Program) constitute all the pleadings and orders served on  
8 Defendant in this action as of this date.

9  
10 **FEDERAL QUESTION JURISDICTION BASED ON THE**  
**FAIR LABOR STANDARDS ACT**

11 4. This action is one over which this Court has original jurisdiction  
12 under 28 U.S.C. Section 1331, and may be removed by Defendant pursuant to 28  
13 U.S.C. Section 1441 in that it is a civil action over which the district courts have  
14 original jurisdiction founded on claims arising under the laws of the United States.

15 5. Federal question jurisdiction arises out of the fact that the Fifth Cause  
16 of Action within the Complaint alleges a violation of the Fair Labor Standards Act  
17 29 U.S.C. §§ 201, *et. seq.* More specifically, Plaintiff alleges that Defendant failed  
18 to pay weekly overtime to its non-exempt employees at the rate required under the  
19 FLSA.

20 6. Pursuant to 28 U.S.C. § 1367(a), the Court has supplemental  
21 jurisdiction over Plaintiff's remaining causes of action because they are  
22 substantially related to the Fifth Cause of Action. The other causes of action arise  
23 from the same nucleus of operative facts as the Fifth Cause of Action such that  
24 they should all should be tried in one action. *See Nishimoto v. Federman-*  
25 *Bachrach & Assoc.*, 903 F.2d 709, 714 (9th Cir. 1990). Considerations of  
26 convenience, judicial economy and fairness to the litigants strongly favor this  
27  
28

1 Court exercising jurisdiction over all claims in the Complaint. *United Mine*  
 2 *Workers v. Gibbs*, 383 U.S. 715, 725-26 (1966).

3 **DIVERSITY JURISDICTION BASED ON**  
 4 **THE CLASS ACTION FAIRNESS ACT**

5 7. The Court has original jurisdiction of this action under the Class  
 6 Action Fairness Act of 2005, codified in relevant part in 28 U.S.C. Section  
 7 1332(d)(2) ("CAFA"). As set forth below, this action is removable pursuant to the  
 8 provisions of 28 U.S.C. Section 1441(a), as the amount in controversy is in excess  
 9 of Five Million Dollars (\$5,000,000.00), exclusive of interest and costs, and is a  
 10 class action in which at least one class member is a citizen of a state different from  
 11 that of the Defendant.

12 **Diverse Citizenship of the Parties**

13 **Plaintiff is a California Citizen**

14 8. Defendant is informed and believes, and on that basis alleges, that  
 15 Plaintiff is, and at all relevant times herein was, a resident of the State of  
 16 California. For diversity purposes, a person is a "citizen" of the state in which he  
 17 is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.  
 18 1983). Residence is *prima facie* evidence of domicile. *State Farm Mut. Auto Ins.*  
 19 *Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994).

20 **WellPoint is Not a California Citizen**

21 9. Pursuant to 28 U.S.C. Section 1332(c), a "corporation shall be deemed  
 22 to be a citizen of any State by which it has been incorporated and of the State  
 23 where it has its principal place of business." Defendant is now, and ever since this  
 24 action commenced has been, incorporated under the laws of the State of Indiana.  
 25 Defendant is a citizen of the State of Indiana, where its corporate headquarters are  
 26 located.

10. The appropriate test to determine a corporation's principal place of business is the "nerve center" test. *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). Under the "nerve center" test, a corporation's principal place of business is the place where its "officers direct, control and coordinate the corporation's activities." *Id.* at 1192. A corporation typically directs, controls and coordinates its activities from its headquarters. *Id.*

11. Under the “nerve center” test, WellPoint’s principal place of business is Indiana. The majority of WellPoint’s executive and administrative functions are performed in Indiana, where its corporate headquarters is located. Defendant’s Chief Executive Officer maintains her office in Indiana. In addition, most of WellPoint’s executive officers have their offices in Indiana.

12. As a result, WellPoint is not now, and was not at the time of the filing of the Complaint, a citizen of the state of California within the meaning of the Acts of Congress relating to the removal of cases.

## Doe Defendants

13. Pursuant to 28 U.S.C. Section 1441(a), the residence of fictitious and unknown defendants should be disregarded for purposes of establishing removal jurisdiction under 28 U.S.C. Section 1332. *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9<sup>th</sup> Cir. 1980) (unnamed defendants are not required to join in a removal petition). Thus, the existence of Doe defendants 1 through 50, inclusive, does not deprive this Court of jurisdiction.

### Amount In Controversy

14. The alleged amount in controversy in this class action exceeds, in the aggregate, five million dollars (\$5,000,000). The Complaint seeks payment of alleged lost wages, penalties, statutory damages, attorneys fees, restitution and disgorgement.

1           15. The claims of the individual members in a class action are aggregated  
2 to determine if the amount in controversy exceeds the sum or value of \$5,000,000.  
3 28 U.S.C. § 1332(d)(6). In addition, Congress intended for federal jurisdiction to  
4 be appropriate under CAFA “if the value of the matter in litigation exceeds  
5 \$5,000,000 either from the viewpoint of the plaintiff or the viewpoint of the  
6 defendant, and regardless of the type of relief sought (e.g., damages, injunctive  
7 relief, or declaratory relief).” Senate Judiciary Committee Report, S. REP. 109-14,  
8 at 42. Moreover, the Senate Judiciary Committee’s Report on the final version of  
9 CAFA makes clear that any doubts regarding the maintenance of interstate class  
10 actions in state or federal court should be resolved in favor of federal jurisdiction.  
11 S. REP. 109-14, at 42-43 (“[I]f a federal court is uncertain about whether ‘all  
12 matters in controversy’ in a purported class action ‘do not in the aggregate exceed  
13 the sum or value of \$5,000,000,’ the court should err in favor of exercising  
14 jurisdiction over the case . . . . Overall, new section 1332(d) is intended to expand  
15 substantially federal court jurisdiction over class actions. Its provisions should be  
16 read broadly, with a strong preference that interstate class actions should be heard  
17 in a federal court if properly removed by any defendant.”).

18           16. When the amount in controversy is not calculable from the face of the  
19 Complaint, a defendant may state underlying facts supporting its assertion that the  
20 amount in controversy exceeds the jurisdictional minimum. *Gaus v. Miles, Inc.*,  
21 980 F.2d 564, 566 (9th Cir. 1992). As set forth below, the amount in controversy  
22 alleged in the class-wide claims exceeds five million dollars (\$5,000,000). All  
23 calculations supporting the amount in controversy are based on the Complaint  
24 allegations, assuming, without any admission, all facts plead by Plaintiff to be true.

25           **The Amount In Controversy For Alleged Labor Code § 203 Penalties**  
26           **Exceeds \$4.3 Million**

27           17. Plaintiff alleges that “[t]o the extent overtime compensation is  
28 determined to be owed to the [class members] who have terminated their



1 employment, Defendant's conduct also violates Labor Code §§ 201 and/or 202,  
 2 and therefore these individuals are also entitled to waiting time penalties under Cal.  
 3 Lab. Code § 203" (Complaint ¶68). Plaintiff, on behalf of himself and the  
 4 putative class members, "demands thirty days of pay as penalty for not paying all  
 5 wages due at time of termination for all employees who terminated employment  
 6 during the [class period]" (Complaint ¶80). In his Prayer, Plaintiff requests "[t]he  
 7 wages of all terminated employees in the CALIFORNIA LABOR SUB-CLASS as  
 8 a penalty from the due date thereof at the same rate until paid or until an action  
 9 therefore is commenced, in accordance with Cal. Lab. Code § 203" (Complaint  
 10 Prayer ¶2C). Therefore, per the allegations in the Complaint, Plaintiff seeks 30  
 11 days' wages for each employee whose employment terminated more than thirty  
 12 days ago for the "California Labor Sub-Class."

13 18. There is a three year statute of limitations for claims seeking waiting  
 14 time penalties for unpaid wages under Labor Code Section 203. *See* Cal. Lab.  
 15 Code § 203 and Civ. Proc. Code § 338(a).

16 19. Defendant calculated the potential 203 penalties for the three year  
 17 statutory period prior to the filing of the Complaint. Defendant calculated the  
 18 potential section 203 penalties in controversy by using the average daily wage for  
 19 all the terminated class members multiplied by 30 days. The amount in  
 20 controversy for section 203 penalties for the three year statutory period is  
 21 \$4,354,080 (at least 772 terminated employees times \$188 average daily wage  
 22 times 30 days = \$4,354,080).

23 **The Amount In Controversy For Alleged Failure to Provide**  
 24 **Accurate Itemized Employee Wage Statements**  
 25 **Exceeds an Additional \$1 Million**

26 20. The Complaint alleges that Defendant "violated Cal. Lab. Code § 226  
 27 in that Defendant failed to provide an accurate wage statement in writing that  
 28 properly and accurately itemized the effective overtime rates of pay for overtime

1 hours worked by Plaintiff and the California Labor Sub-Class and thereby also  
 2 failed to set forth the correct overtime wages earned by the employees.”  
 3 (Complaint ¶71). The Complaint further alleges that Defendant “knowingly and  
 4 intentionally failed to comply with Cal. Lab. Code § 226, causing injury and  
 5 damages to the Plaintiff and the other members of the California Labor Sub-Class.”  
 6 (Complaint ¶72). Under Labor Code §226(e), an employee is entitled to recover  
 7 the greater of actual damages or \$50 for the initial pay period in which a wage  
 8 statement violation occurs, and \$100 for each subsequent pay period, not to exceed  
 9 an aggregate penalty of \$4,000. (Complaint ¶ 72, Complaint Prayer ¶ 2(D)).

10 21. Once a quarter, Defendant’s non-exempt employees who qualify are  
 11 paid a bonus. Taking the quarterly payments into account, a penalty less than the  
 12 \$4,000 maximum would apply through the date of removal because class members,  
 13 on average, received a bonus in each of six quarters during the three year class  
 14 period that Plaintiff alleges for his Section 226 claim. Per the calculations set forth  
 15 in Labor Code § 226(e), the amount in controversy for the six pay periods at issue  
 16 prior to removal is \$1,055,450 (at least 1,919 employees per pay period times six  
 17 pay periods times \$50 for initial violation and \$100 for subsequent violations =  
 18 \$1,055,450).

19 **The Amount In Controversy For Alleged Failure to Pay**  
 20 **Proper Overtime Compensation Exceeds an Additional \$350,000**

21 22. The Complaint alleges that when Defendant calculated the regular rate  
 22 of pay in order to pay overtime to Plaintiff and the class members, “WellPoint  
 23 failed and still fails to include the bonus compensation as part of the employee’s  
 24 ‘regular rate of pay’ for purposes of calculating overtime pay.” (Complaint ¶ 6).  
 25 As a result, Plaintiff alleges that “the failure to do so has resulted in a systematic  
 26 underpayment of overtime compensation” to Plaintiff and the class members.  
 27 (Complaint ¶ 6). Plaintiff further alleges that “Defendant maintained a uniform  
 28 wage practice of paying the Plaintiff and the other members of the California



1 Labor Sub-Class without regard to the correct applicable overtime rate for the  
 2 number of overtime hours they worked.” (Complaint ¶ 58). Plaintiff requests  
 3 recovery of all unpaid overtime wages. (Complaint ¶ 68).

4 23. By virtue of the foregoing allegations, the amount in controversy for  
 5 alleged overtime compensation owed is at least \$354,970 (at least 1,919 class  
 6 members times six quarters times 33.15 (average overtime hours worked per  
 7 quarter) times \$1.86 (the regular rate of pay of average quarterly bonus) times 0.5  
 8 = \$354,970).

9 **Potential Attorneys Fees Exceed an Additional \$1.4 Million**

10 24. The Complaint also seeks such further relief as the Court deems just  
 11 and equitable (Complaint Prayer ¶4(B)), which would include attorneys fees  
 12 eligible for recovery under Labor Code §§ 226, 1194 and 203. Requests for  
 13 attorneys fees must be taken into account in ascertaining the amount in  
 14 controversy. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir.  
 15 1998) (claims for statutory attorney’s fees to be included in amount in controversy,  
 16 regardless of whether award is discretionary or mandatory). Moreover, the  
 17 potential for an award of mandatory attorneys fees is included in the amount in  
 18 controversy analysis for the purposes of removal under CAFA. *Lowdermilk v. U.S.*  
 19 *Bank National Ass’n*, 479 F.3d 994, 1000 (9<sup>th</sup> Cir. 2007). Attorneys fees may be  
 20 awarded based on the lodestar method (calculated by applying counsel’s hourly  
 21 rates to the time spent and a risk multiplier where appropriate). *Staton v. Boeing*  
 22 *Co.*, 327 F. 3d 938, 968 (9th Cir. 2003). Alternatively, the court may simply award  
 23 counsel a percentage of the fund recovered. *Hanlon v. Chrysler Corp.*, 150 F. 3d  
 24 1011, 1029 (9th Cir. 1998). The Ninth Circuit has established a benchmark of 25  
 25 percent of the recovery, which may be adjusted or replaced by a lodestar  
 26 calculation “when specific circumstances indicate that the percentage recovery  
 27 would be either too small or too large in light of the hours devoted to the case or  
 28

1 other relevant factors.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904  
 2 F. 2d 1301, 1311 (9th Cir. 1990). Given the allegations contained on the face of  
 3 the Complaint, an award of attorneys fees equal to 25 percent of the total alleged  
 4 damages, \$5,764,500, would equal \$1,441,125.

#### 5 **Total Potential Damages, Plus Attorneys Fees, Exceeds \$5 Million**

6 25. As shown above, potential damages under Labor Code §203  
 7 (\$4,354,080), §226(a) (\$1,055,450) and unpaid overtime wages (\$354,970) equals  
 8 \$5,764,500. Including potential attorneys fees (\$1,411,125), the amount in  
 9 controversy equals \$7,205,625. Plaintiff also seeks additional interest and costs.  
 10 Consequently, it is clear that the amount in controversy in this class action, as  
 11 pleaded by Plaintiff, far exceeds \$5,000,000.

12 26. Because diversity of citizenship exists—the Plaintiff, being a citizen  
 13 of the State of California, and the Defendant, being a citizen of the State of  
 14 Indiana—and because the amount in controversy exceeds Five Million Dollars  
 15 (\$5,000,000), this Court has original jurisdiction of the action pursuant to 28  
 16 U.S.C. § 1332(d)(2). This action is therefore a proper one for removal to this  
 17 Court.

#### 18 **VENUE**

19 27. Venue lies in the United States District Court for the Central District  
 20 of California pursuant to 28 U.S.C. §§ 1441(a) and 1391(b), because the original  
 21 state court action was filed in this district and this is the judicial district in which  
 22 the action arose. This action originally was brought in the Superior Court of the  
 23 State of California, County of Los Angeles.

#### 24 **TIMELINESS OF REMOVAL**

25 28. This Notice of Removal of Civil Action is filed within thirty days  
 26 after receipt by Defendant of a copy of a pleading, motion, order, or other paper  
 27 from which it may first be ascertained that the case is one which is or has become  
 28

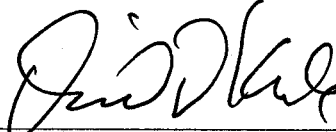
1 removable. More specifically, this removal is filed within 30 days of service of the  
2 Complaint on Defendant.

3  
4 WHEREFORE, Defendant prays that the above action pending before the  
5 Superior Court of the State of California for the County of Los Angeles be  
6 removed to this Court.

7  
8 DATED: September 18, 2012

Respectfully submitted,

SEYFARTH SHAW LLP

9  
10  
11 By: 

12 David D. Kadue  
13 Attorneys for Defendant  
14 THE WELLPOINT COMPANIES,  
15 INC.  
16  
17  
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28

# EXHIBIT A

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

THE WELLPOINT COMPANIES, INC., a Indiana Corporation; and  
Does 1 through 50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

JOSUE TALAMANTEZ, an individual, on behalf of himself and on  
behalf of all persons similarly situated,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY**  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

AUG 03 2012

John A. Clarke, Executive Officer/Clerk  
By: Chk. Order Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Central District, Stanley Mosk

111 N. Hill St., Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman B. Blumenthal (Bar # 68687)

Blumenthal, Nordrehaug & Bhowmik, 2265 Clark, La Jolla, CA 92037

DATE:

(Fecha)

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

AUG 03 2012

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): THE WELLPOINT COMPANIES, INC. a Indiana Corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.80 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):

**BLUMENTHAL, NORDREHAUG & BHOWMIK**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: [www.bamlawca.com](http://www.bamlawca.com)

Attorneys for Plaintiff

**CONFORMED COPY**  
**ORIGINAL FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

AUG 03 2012

John A. Clarke, Executive Officer/Clerk

By [Signature] Deputy  
Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

JOSUE TALAMANTEZ, an individual,  
on behalf of himself and on behalf of all  
persons similarly situated,

Plaintiff,

vs.

THE WELLPOINT COMPANIES, INC.,  
a Indiana Corporation; and Does 1  
through 50, Inclusive,

Defendants.

Case No. BC 489001

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
4. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and
5. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. §§ 201, *et seq.*

**DEMAND FOR A JURY TRIAL**



1 Plaintiff Josue Talamantez ("PLAINTIFF"), an individual, on behalf of himself and all  
2 other similarly situated current and former employees, alleges on information and belief, except  
3 for his own acts and knowledge which are based on personal knowledge, the following:

4 **THE PARTIES**

5 1. Defendant The Wellpoint Companies, Inc. ("WELLPOINT" or "DEFENDANT"),  
6 is a Indiana Corporation with its principal place of business located in Indianapolis, Indiana.  
7 At all relevant times mentioned herein, WELLPOINT conducted and continues to conduct  
8 substantial business in the state of California.

9 2. WELLPOINT is one of the nation's largest health benefits companies, with nearly  
10 34 million members in its affiliated health plans and more than 62 million individuals served  
11 through its subsidiaries. Headquartered in Indianapolis, Indiana, WELLPOINT is an  
12 independent licensee of the Blue Cross and Blue Shield Association serving members in  
13 California, Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri, Nevada, New  
14 Hampshire, New York, Ohio, Virginia and Wisconsin. WELLPOINT reported revenues of  
15 \$60 billion in 2011 and currently employs over 37,000 employees.

16 3. Plaintiff Josue Talamantez was employed by WELLPOINT in California from  
17 June of 2003 to June of 2012 and was at all times relevant mentioned herein classified by  
18 WELLPOINT as a non-exempt employee paid in whole or in part on an hourly basis and  
19 received additional compensation from WELLPOINT in the form of a non-discretionary bonus.

20 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,  
21 defined as all individuals who are or previously were employed by Defendant The Wellpoint  
22 Companies, Inc. in California as non-exempt employees who received bonus compensation  
23 payments during the same pay period in which they were paid overtime compensation (the  
24 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the  
25 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA  
26 CLASS PERIOD").

27 5. State law provides that employees must be paid overtime at one-and-one-half  
28 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were

1 compensated at an hourly rate plus bonus pay that was tied to specific elements of an  
2 employee's performance.

3         6. The second component of PLAINTIFF's and other CALIFORNIA CLASS  
4 Members' compensation was WELLPOINT's non-discretionary bonus program that paid the  
5 PLAINTIFF and other CALIFORNIA CLASS Members bonus wages based on their  
6 performance for WELLPOINT. The non-discretionary bonus program provided all employees  
7 paid on an hourly basis with bonus compensation when the employees met the various  
8 performance goals set by WELLPOINT. However, when calculating the regular rate of pay in  
9 order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,  
10 WELLPOINT failed and still fails to include the bonus compensation as part of the employees'  
11 "regular rate of pay" for purposes of calculating overtime pay. Management and supervisors  
12 described the bonus program to potential and new employees as part of the compensation  
13 package. As a matter of law, the bonus compensation received by the PLAINTIFF and other  
14 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to  
15 do so has resulted in a systematic underpayment of overtime compensation to PLAINTIFF and  
16 other CALIFORNIA CLASS Members by WELLPOINT.

17         7. As a result of this miscalculation the wage statements issued to PLAINTIFF and  
18 other CALIFORNIA CLASS Members violate California law, and in particular, Labor Code  
19 Section 226(a). The policies and practices alleged herein also constitute deceptive, unfair  
20 and/or unlawful business practices whereby WELLPOINT retained wages due PLAINTIFF and  
21 other CALIFORNIA CLASS Members for all hours worked. The PLAINTIFF seeks an  
22 injunction enjoining such conduct by WELLPOINT in the future, relief for the named  
23 PLAINTIFF and other CALIFORNIA CLASS Members as set forth herein below, and all other  
24 appropriate equitable relief the court deems proper.

25         8. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA  
26 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during  
27 the CALIFORNIA CLASS PERIOD caused by WELLPOINT's uniform policy and practice  
28 which failed to lawfully compensate these employees for all their overtime hours worked.

1 WELLPOINT's uniform policy and practice alleged herein was an unlawful, unfair and  
2 deceptive business practice whereby WELLPOINT retained and continues to retain wages due  
3 PLAINTIFF and the other members of the CALIFORNIA CLASS. PLAINTIFF and the other  
4 members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by  
5 WELLPOINT in the future, relief for the named PLAINTIFF and the other members of the  
6 CALIFORNIA CLASS who have been economically injured by WELLPOINT's past and  
7 current unlawful conduct, and all other appropriate legal and equitable relief.

8 9. WELLPOINT had different shifts with different non-exempt employees paid on  
9 an hourly basis working during each shift. Although the specific time of each shift differed, the  
10 hours spent working during the shifts were nearly identical in every way. Thus, PLAINTIFF's  
11 and other CALIFORNIA CLASS Members' typical workweek required them to perform work  
12 in excess of eight (8) hours in a workday and forty (40) hours in a workweek. PLAINTIFF and  
13 other members of the CALIFORNIA CLASS worked overtime hours in the same pay period in  
14 which they received non-discretionary bonus compensation.

15 10. The true names and capacities, whether individual, corporate, subsidiary,  
16 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
17 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names  
18 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this  
19 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they  
20 are ascertained. PLAINTIFF is informed and believes, and based upon that information and  
21 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,  
22 inclusive, are responsible in some manner for one or more of the events and happenings that  
23 proximately caused the injuries and damages hereinafter alleged.

24 11. The agents, servants and/or employees of the Defendants and each of them  
25 acting on behalf of the Defendants acted within the course and scope of his, her or its authority  
26 as the agent, servant and/or employee of the Defendants, and personally participated in the  
27 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
28 Consequently, the acts of each Defendant are legally attributable to the other Defendants and

1 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the  
3 Defendants' agents, servants and/or employees.

#### 4 THE CONDUCT

5 12. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed and continues  
6 to fail to accurately calculate and pay PLAINTIFF and the other members of the CALIFORNIA  
7 CLASS for their overtime hours worked. DEFENDANT systematically, unlawfully and  
8 unilaterally failed to accurately calculate wages for overtime hours worked by the PLAINTIFF  
9 and other members of the CALIFORNIA CLASS in order to avoid paying these employees the  
10 correct overtime compensation. As a result, the PLAINTIFF and the other members of the  
11 CALIFORNIA CLASS forfeited wages due them for regularly working overtime without  
12 compensation at the correct overtime rates. DEFENDANT's uniform policy and practice to not  
13 pay the members of the CALIFORNIA CLASS the correct overtime rate for all overtime hours  
14 worked in accordance with applicable law is evidenced by DEFENDANT's business records.

15 13. In violation of the applicable sections of the California Labor Code and the  
16 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as  
17 a matter of company policy, practice and procedure, intentionally, knowingly and systematically  
18 failed to compensate the PLAINTIFF and the other members of the CALIFORNIA CLASS at  
19 the correct rate of pay for all overtime hours worked. This uniform policy and practice of  
20 DEFENDANT was intended to purposefully avoid the payment of the correct overtime  
21 compensation as required by California law which allowed DEFENDANT to illegally profit and  
22 gain an unfair advantage over competitors who complied with the law. To the extent equitable  
23 tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the  
24 CALIFORNIA CLASS PERIOD should be adjusted accordingly.

25 14. DEFENDANT also failed to provide the PLAINTIFF and the other members of  
26 the CALIFORNIA CLASS with complete and accurate wage statements which failed to show,  
27 among other things, the correct overtime rate for overtime hours worked, including, work  
28 performed in excess of eight (8) hours in a workday and forty (40) hours in any workweek. Cal.

1 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with  
2 an accurate itemized wage statement in writing showing, among other things, gross wages  
3 earned and all applicable hourly rates in effect during the pay period and the corresponding  
4 number of hours worked at each hourly rate. As a result, DEFENDANT provided the  
5 PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which  
6 violated Cal. Lab. Code § 226.

7 15. By reason of this uniform conduct applicable to PLAINTIFF and all  
8 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
9 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
10 (the "UCL"), by engaging in a company-wide policy and procedure which failed to accurately  
11 calculate and record the overtime rate for the overtime hours worked by the PLAINTIFF and  
12 other CALIFORNIA CLASS Members. The proper calculation of these employees' overtime  
13 hour rates is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard  
14 of the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all  
15 required overtime compensation for work performed by the members of the CALIFORNIA  
16 CLASS and violated the California Labor Code and regulations promulgated thereunder as  
17 herein alleged.

18 16. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to  
19 him in the form of two components. One component of PLAINTIFF's compensation was a base  
20 hourly wage at the rate of \$20.55. The second component of the PLAINTIFF's compensation  
21 was a non-discretionary performance bonus. DEFENDANT paid the bonus, so long as the  
22 PLAINTIFF met certain predefined performance requirements. PLAINTIFF met  
23 DEFENDANT's predefined eligibility performance requirements in various pay periods  
24 throughout his employment with DEFENDANT and DEFENDANT paid PLAINTIFF the  
25 performance bonus wage. During these pay periods in which PLAINTIFF was paid the non-  
26 discretionary performance bonus by DEFENDANT, PLAINTIFF also worked overtime hours  
27 for DEFENDANT, but DEFENDANT never included the bonus compensation in PLAINTIFF's  
28 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's



1 accurate overtime rate and thereby underpaid the PLAINTIFF for overtime hours worked  
2 throughout his employment with DEFENDANT. The bonus compensation paid by  
3 DEFENDANT constituted wages within the meaning of the California Labor Code and thereby  
4 should have been part of PLAINTIFF's "regular rate of pay." DEFENDANT also provided  
5 PLAINTIFF with a paystub that failed to accurately display PLAINTIFF's correct rates of  
6 overtime pay for certain pay periods in violation of Cal. Lab. Code § 226(a). To date,  
7 DEFENDANT has not fully paid the PLAINTIFF for all his overtime wages still owed to him  
8 or any penalty wages owed to him under California Labor Code § 203.

#### 9 JURISDICTION AND VENUE

10 17. This Court has jurisdiction over this Action pursuant to California Code of  
11 Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203.  
12 This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated  
13 employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

14 18. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
15 Sections 395 and 395.5, because the DEFENDANT (i) currently maintains and at all relevant  
16 times maintained offices and facilities in this County and/or conducts substantial business in this  
17 County, and (ii) committed the wrongful conduct herein alleged in this County against members  
18 of the CALIFORNIA CLASS and CALIFORNIA LABOR SUB-CLASS.

#### 19 THE CALIFORNIA CLASS

20 19. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and  
21 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL")  
22 as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class,  
23 defined as all individuals who are or previously were employed by DEFENDANT in California  
24 as non-exempt employees who received bonus compensation payments during the same pay  
25 period in which they were paid overtime compensation (the "CALIFORNIA CLASS") at any  
26 time during the period beginning four (4) years prior to the filing of this Complaint and ending  
27 on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").  
28



1           20. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
2 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
3 accordingly.

4           21. The California Legislature has commanded that "all wages... ..earned by any  
5 person in any employment are due and payable twice during each calendar month, on days  
6 designated in advance by the employer as the regular paydays", and further that "[a]ny work  
7 in excess of eight hours in one workday and any work in excess of 40 hours in any one  
8 workweek . . . shall be compensated at the rate of no less than one and one-half times the  
9 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare  
10 Commission (IWC), however, is statutorily authorized to "establish exemptions from the  
11 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and  
12 professional employees, provided [inter alia] that the employee is primarily engaged in duties  
13 that meet the test of the exemption, [and] customarily and regularly exercises discretion and  
14 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the  
15 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA  
16 LABOR SUB-CLASS qualify for exemption from the above requirements.

17           22. DEFENDANT, as a matter of company policy, practice and procedure, and  
18 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
19 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
20 wilfully, engaged in a practice whereby DEFENDANT systematically failed to correctly  
21 calculate and record overtime compensation for overtime hours worked by PLAINTIFF and the  
22 other members of the CALIFORNIA CLASS, even though DEFENDANT enjoyed the benefit  
23 of this work, required employees to perform this work and permitted or suffered to permit this  
24 overtime work.

25           23. DEFENDANT has the legal burden to establish that each and every  
26 CALIFORNIA CLASS Member is paid the applicable rate for all overtime hours worked and  
27 to accurately calculate the "regular rate of pay" by including the bonus compensation that  
28 PLAINTIFF and members of the CALIFORNIA CLASS were awarded by DEFENDANT. The

1 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed to  
2 have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy  
3 or practice to ensure that each and every CALIFORNIA CLASS Member is paid the applicable  
4 overtime rate for all overtime hours worked, so as to satisfy their burden. This common  
5 business practice applicable to each and every CALIFORNIA CLASS Member can be  
6 adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business &  
7 Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not  
8 elements of this claim.

9 24. At no time during the CALIFORNIA CLASS PERIOD was the compensation for  
10 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the  
11 employee for all overtime hours worked at the applicable rate, as required by California Labor  
12 Code §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the  
13 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so  
14 as to include all earnings in the overtime compensation calculation as required by California  
15 Labor Code §§ 510, *et seq.*

16 25. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA  
17 CLASS Members is impracticable.

18 26. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS under  
19 California law by:

- 20 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code  
21 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in  
22 place company policies, practices and procedures that failed to pay all  
23 wages due the CALIFORNIA CLASS for all overtime hours worked, and  
24 fail to accurately record the applicable rates of all overtime hours worked  
25 by the CALIFORNIA CLASS;
- 26 (b) Committing an act of unfair competition in violation of the California  
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
28 unlawfully, unfairly, and/or deceptively having in place a company policy,

1 practice and procedure that failed to correctly calculate overtime  
 2 compensation due to PLAINTIFF and the members of the CALIFORNIA  
 3 CLASS;

4 (c) Committing an act of unfair competition in violation of the California  
 5 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
 6 unlawfully, unfairly, and/or deceptively failing to pay the correct overtime  
 7 pay owed to PLAINTIFF and the members of the CALIFORNIA CLASS  
 8 for overtime hours worked;

9 (d) Committing an act of unfair competition in violation of the California  
 10 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
 11 violating Cal. Lab. Code § 201 and 202, by failing to provide timely  
 12 payment of all wages owed to the PLAINTIFF and members of the  
 13 CALIFORNIA CLASS who failed to receive the correct overtime wages  
 14 for hours worked and who have terminated their employment; and,

15 (e) Committing an act of unfair competition in violation of the California  
 16 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by  
 17 violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et*  
 18 *seq.*, by failing to pay the correct overtime wages to the PLAINTIFF and  
 19 the members of the CALIFORNIA CLASS as legally required by the  
 20 FLSA, and retaining the unpaid overtime to the benefit of DEFENDANT.

21 27. This Class Action meets the statutory prerequisites for the maintenance of a  
 22 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
 24 that the joinder of all such persons is impracticable and the disposition of  
 25 their claims as a class will benefit the parties and the Court;

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
 27 that are raised in this Complaint are common to the CALIFORNIA  
 28 CLASS will apply uniformly to every member of the CALIFORNIA

1 CLASS;

2 (c) The claims of the representative PLAINTIFF are typical of the claims of  
3 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the  
4 other members of the CALIFORNIA CLASS, was a non-exempt  
5 employee paid on an hourly basis and paid an additional non-discretionary  
6 performance bonus wage who was subjected to the DEFENDANT's  
7 practice and policy which failed to pay the correct rate of overtime wages  
8 due to the CALIFORNIA CLASS for all overtime hours worked by the  
9 CALIFORNIA CLASS and thereby systematically underpaid overtime  
10 compensation to the CALIFORNIA CLASS. PLAINTIFF sustained  
11 economic injury as a result of DEFENDANT's employment practices.  
12 PLAINTIFF and the members of the CALIFORNIA CLASS were and are  
13 similarly or identically harmed by the same unlawful, deceptive, unfair  
14 and pervasive pattern of misconduct engaged in by DEFENDANT; and,

15 (d) The representative PLAINTIFF will fairly and adequately represent and  
16 protect the interest of the CALIFORNIA CLASS, and has retained  
17 counsel who are competent and experienced in Class Action litigation.  
18 There are no material conflicts between the claims of the representative  
19 PLAINTIFF and the members of the CALIFORNIA CLASS that would  
20 make class certification inappropriate. Counsel for the CALIFORNIA  
21 CLASS will vigorously assert the claims of all CALIFORNIA CLASS  
22 Members.

23 28. In addition to meeting the statutory prerequisites to a Class Action, this action  
24 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

25 (a) Without class certification and determination of declaratory, injunctive,  
26 statutory and other legal questions within the class format, prosecution of  
27 separate actions by individual members of the CALIFORNIA CLASS will  
28 create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly failed to pay all wages due. Including the correct overtime rate, for all hours worked by the members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient

1 adjudication of the controversy, including consideration of:

- 2 1) The interests of the members of the CALIFORNIA CLASS in  
3 individually controlling the prosecution or defense of separate  
4 actions in that the substantial expense of individual actions will be  
5 avoided to recover the relatively small amount of economic losses  
6 sustained by the individual CALIFORNIA CLASS Members when  
7 compared to the substantial expense and burden of individual  
8 prosecution of this litigation;
- 9 2) Class certification will obviate the need for unduly duplicative  
10 litigation that would create the risk of:
- 11 A. Inconsistent or varying adjudications with respect to  
12 individual members of the CALIFORNIA CLASS, which  
13 would establish incompatible standards of conduct for the  
14 DEFENDANT; and/or,
- 15 B. Adjudications with respect to individual members of the  
16 CALIFORNIA CLASS would as a practical matter be  
17 dispositive of the interests of the other members not parties  
18 to the adjudication or substantially impair or impede their  
19 ability to protect their interests;
- 20 3) In the context of wage litigation because a substantial number of  
21 individual CALIFORNIA CLASS Members will avoid asserting  
22 their legal rights out of fear of retaliation by DEFENDANT, which  
23 may adversely affect an individual's job with DEFENDANT or  
24 with a subsequent employer, the Class Action is the only means to  
25 assert their claims through a representative; and,
- 26 4) A class action is superior to other available methods for the fair  
27 and efficient adjudication of this litigation because class treatment  
28 will obviate the need for unduly and unnecessary duplicative



litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

29. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of

1 DEFENDANT are sufficient to adequately compensate the members of  
2 the CALIFORNIA CLASS for the injuries sustained;

3 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
4 to the CALIFORNIA CLASS, thereby making final class-wide relief  
5 appropriate with respect to the CALIFORNIA CLASS as a whole;

6 (h) The members of the CALIFORNIA CLASS are readily ascertainable from  
7 the business records of DEFENDANT. The CALIFORNIA CLASS  
8 consists of all individuals who are or previously were employed by  
9 DEFENDANT in California as non-exempt employees paid on an hourly  
10 basis and who received bonus compensation during the same pay period  
11 in which they worked overtime hours during the CALIFORNIA CLASS  
12 PERIOD; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring  
14 a efficient and rapid conclusion to all litigation of all wage and hour  
15 related claims arising out of the conduct of DEFENDANT as to the  
16 members of the CALIFORNIA CLASS.

17 30. DEFENDANT maintains records from which the Court can ascertain and  
18 identify by job title each of DEFENDANT's employees who as have been systematically,  
19 intentionally and uniformly subjected to DEFENDANT's company policy, practices and  
20 procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include  
21 any additional job titles of similarly situated employees when they have been identified.

22 **THE CALIFORNIA LABOR SUB-CLASS**

23 31. PLAINTIFF further brings the Second, Third, and Fourth Causes of Action on  
24 behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who  
25 received bonus compensation payments during the same pay period in which they worked  
26 overtime hours (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period  
27 three (3) years prior to the filing of the complaint and ending on the date as determined by the  
28 Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ.

1 Proc. § 382.

2 32. DEFENDANT, as a matter of company policy, practice and procedure, and  
3 in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order  
4 requirements, and the applicable provisions of California law, intentionally, knowingly, and  
5 wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate overtime  
6 compensation for the overtime hours worked by the PLAINTIFF and the other members of the  
7 CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this  
8 work, required employees to perform this work and permitted or suffered to permit this  
9 overtime work. DEFENDANT has uniformly denied these CALIFORNIA LABOR SUB-  
10 CLASS Members overtime wages at the correct amount to which these employees are entitled  
11 in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling  
12 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the  
13 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

14 33. DEFENDANT maintains records from which the Court can ascertain and  
15 identify by name and job title, each of DEFENDANT's employees who have been  
16 systematically, intentionally and uniformly subjected to DEFENDANT's company policy,  
17 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint  
18 to include any additional job titles of similarly situated employees when they have been  
19 identified.

20 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
21 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

22 35. Common questions of law and fact exist as to members of the CALIFORNIA  
23 LABOR SUB-CLASS, including, but not limited, to the following:

24 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay  
25 overtime compensation to members of the CALIFORNIA LABOR SUB-  
26 CLASS in violation of the California Labor Code and California  
27 regulations and the applicable California Wage Order;

28 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are

entitled to overtime compensation for overtime hours worked under the overtime pay requirements of California law;

- (c) Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime hours worked by the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- (d) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (e) Whether DEFENDANT's policy and practice of failing to pay members of the CALIFORNIA LABOR SUB-CLASS all wages when due within the time required by law after their employment ended violates California law;
- (f) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (h) Whether DEFENDANT's conduct was willful.

36. DEFENDANT, as a matter of company policy, practice and procedure, failed to accurately calculate overtime compensation for the CALIFORNIA LABOR SUB-CLASS Members and failed to provide accurate records of the applicable overtime rates for the overtime hours worked by these employees. All of the CALIFORNIA LABOR SUB-CLASS Members, including the PLAINTIFF, were non-exempt employees who were paid on an hourly basis, were paid for overtime hours worked, and were paid additional non-discretionary performance bonus wages by DEFENDANT according to uniform and systematic company procedures as alleged herein above. This business practice is uniformly applied to each and every member of the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide basis.

37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS

1 under California law by:

- 2 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay the
- 3 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
- 4 CLASS the correct overtime pay for which DEFENDANT is liable
- 5 pursuant to Cal. Lab. Code § 1194;
- 6 (b) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF and
- 7 the members of the CALIFORNIA LABOR SUB-CLASS with an
- 8 accurate itemized statement in writing showing all accurate and applicable
- 9 overtime rates in effect during the pay period and the corresponding
- 10 number of hours worked at each overtime rate by the employee; and,
- 11 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
- 12 when an employee is discharged or quits from employment, the employer
- 13 must pay the employee all wages due without abatement, by failing to
- 14 tender full payment and/or restitution of wages owed or in the manner
- 15 required by California law to the members of the CALIFORNIA LABOR
- 16 SUB-CLASS who have terminated their employment.

17 38. This Class Action meets the statutory prerequisites for the maintenance of a  
 18 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 19 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
- 20 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
- 21 Members is impracticable and the disposition of their claims as a class
- 22 will benefit the parties and the Court;
- 23 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
- 24 that are raised in this Complaint are common to the CALIFORNIA
- 25 LABOR SUB-CLASS and will apply uniformly to every member of the
- 26 CALIFORNIA LABOR SUB-CLASS;
- 27 (c) The claims of the representative PLAINTIFF are typical of the claims of
- 28 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,

1 like all the other members of the CALIFORNIA LABOR SUB-CLASS,  
2 was a non-exempt employee paid on an hourly basis and paid an  
3 additional non-discretionary performance bonus wage who was subjected  
4 to the DEFENDANT's practice and policy which failed to pay the correct  
5 rate of overtime wages due to the CALIFORNIA LABOR SUB-CLASS  
6 for all overtime hours worked. PLAINTIFF sustained economic injury as  
7 a result of DEFENDANT's employment practices. PLAINTIFF and the  
8 members of the CALIFORNIA LABOR SUB-CLASS were and are  
9 similarly or identically harmed by the same unlawful, deceptive, unfair  
10 and pervasive pattern of misconduct engaged in by DEFENDANT; and,

11 (d) The representative PLAINTIFF will fairly and adequately represent and  
12 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has  
13 retained counsel who are competent and experienced in Class Action  
14 litigation. There are no material conflicts between the claims of the  
15 representative PLAINTIFF and the members of the CALIFORNIA  
16 LABOR SUB-CLASS that would make class certification inappropriate.  
17 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously  
18 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

19 39. In addition to meeting the statutory prerequisites to a Class Action, this action  
20 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

21 (a) Without class certification and determination of declaratory, injunctive,  
22 statutory and other legal questions within the class format, prosecution of  
23 separate actions by individual members of the CALIFORNIA LABOR  
24 SUB-CLASS will create the risk of:

25 1) Inconsistent or varying adjudications with respect to individual  
26 members of the CALIFORNIA LABOR SUB-CLASS which  
27 would establish incompatible standards of conduct for the parties  
28 opposing the CALIFORNIA LABOR SUB-CLASS; or,



1                   2)    Adjudication with respect to individual members of the  
2                            CALIFORNIA LABOR SUB-CLASS which would as a practical  
3                            matter be dispositive of interests of the other members not party to  
4                            the adjudication or substantially impair or impede their ability to  
5                            protect their interests.

6                   (b)    The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted  
7                            or refused to act on grounds generally applicable to the CALIFORNIA  
8                            LABOR SUB-CLASS, making appropriate class-wide relief with respect  
9                            to the CALIFORNIA LABOR SUB-CLASS as a whole in that  
10                          DEFENDANT uniformly failed to pay all wages due. Including the  
11                          correct overtime rate, for all overtime hours worked by the members of the  
12                          CALIFORNIA LABOR SUB-CLASS as required by law;

13                   (c)    Common questions of law and fact predominate as to the members of the  
14                            CALIFORNIA LABOR SUB-CLASS, with respect to the practices and  
15                            violations of California Law as listed above, and predominate over any  
16                            question affecting only individual CALIFORNIA LABOR SUB-CLASS  
17                            Members, and a Class Action is superior to other available methods for  
18                            the fair and efficient adjudication of the controversy, including  
19                            consideration of:

- 20                   1)    The interests of the members of the CALIFORNIA LABOR SUB-  
21                            CLASS in individually controlling the prosecution or defense of  
22                            separate actions in that the substantial expense of individual  
23                            actions will be avoided to recover the relatively small amount of  
24                            economic losses sustained by the individual CALIFORNIA  
25                            LABOR SUB-CLASS Members when compared to the substantial  
26                            expense and burden of individual prosecution of this litigation;  
27                   2)    Class certification will obviate the need for unduly duplicative  
28                            litigation that would create the risk of:

1 A. Inconsistent or varying adjudications with respect to  
2 individual members of the CALIFORNIA LABOR SUB-  
3 CLASS, which would establish incompatible standards of  
4 conduct for the DEFENDANT; and/or,

5 B. Adjudications with respect to individual members of the  
6 CALIFORNIA LABOR SUB-CLASS would as a practical  
7 matter be dispositive of the interests of the other members  
8 not parties to the adjudication or substantially impair or  
9 impede their ability to protect their interests;

10 3) In the context of wage litigation because a substantial number of  
11 individual CALIFORNIA LABOR SUB-CLASS Members will  
12 avoid asserting their legal rights out of fear of retaliation by  
13 DEFENDANT, which may adversely affect an individual's job  
14 with DEFENDANT or with a subsequent employer, the Class  
15 Action is the only means to assert their claims through a  
16 representative; and,

17 4) A class action is superior to other available methods for the fair  
18 and efficient adjudication of this litigation because class treatment  
19 will obviate the need for unduly and unnecessary duplicative  
20 litigation that is likely to result in the absence of certification of  
21 this action pursuant to Cal. Code of Civ. Proc. § 382.

22 40. This Court should permit this action to be maintained as a Class Action  
23 pursuant to Cal. Code of Civ. Proc. § 382 because:

24 (a) The questions of law and fact common to the CALIFORNIA LABOR  
25 SUB-CLASS predominate over any question affecting only individual  
26 CALIFORNIA LABOR SUB-CLASS Members;

27 (b) A Class Action is superior to any other available method for the fair and  
28 efficient adjudication of the claims of the members of the CALIFORNIA

1 LABOR SUB-CLASS because in the context of employment litigation a  
2 substantial number of individual CALIFORNIA LABOR SUB-CLASS  
3 Members will avoid asserting their rights individually out of fear of  
4 retaliation or adverse impact on their employment;

5 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so  
6 numerous that it is impractical to bring all members of the CALIFORNIA  
7 LABOR SUB-CLASS before the Court;

8 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS  
9 Members, will not be able to obtain effective and economic legal redress  
10 unless the action is maintained as a Class Action;

11 (e) There is a community of interest in obtaining appropriate legal and  
12 equitable relief for the acts of unfair competition, statutory violations and  
13 other improprieties, and in obtaining adequate compensation for the  
14 damages and injuries which DEFENDANT's actions have inflicted upon  
15 the CALIFORNIA LABOR SUB-CLASS;

16 (f) There is a community of interest in ensuring that the combined assets of  
17 DEFENDANT are sufficient to adequately compensate the members of  
18 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally applicable  
20 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-  
21 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-  
22 CLASS as a whole;

23 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
24 ascertainable from the business records of DEFENDANT. The  
25 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA  
26 CLASS Members who were paid by the DEFENDANT for overtime hours  
27 worked during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

28 (i) Class treatment provides manageable judicial treatment calculated to bring

1 a efficient and rapid conclusion to all litigation of all wage and hour  
 2 related claims arising out of the conduct of DEFENDANT as to the  
 3 members of the CALIFORNIA LABOR SUB-CLASS.

4  
 5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

7 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

8 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

9 41. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and  
 10 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 40 of this  
 11 Complaint.

12 42. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof.  
 13 Code § 17021.

14 43. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines  
 15 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section  
 16 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair  
 17 competition as follows:

18 Any person who engages, has engaged, or proposes to engage in unfair  
 19 competition may be enjoined in any court of competent jurisdiction. The  
 20 court may make such orders or judgments, including the appointment of  
 21 a receiver, as may be necessary to prevent the use or employment by any  
 22 person of any practice which constitutes unfair competition, as defined in  
 23 this chapter, or as may be necessary to restore to any person in interest any  
 24 money or property, real or personal, which may have been acquired by  
 25 means of such unfair competition.

26 Cal. Bus. & Prof. Code § 17203.

27 44. By the conduct alleged herein, DEFENDANT has engaged and continues to  
 28 engage in a business practice which violates California law, including but not limited to, Wage  
 Order 4-2001, the California Code of Regulations and the California Labor Code including  
 Sections 201, 202, 203, 204, 510, 1194 & 1198, the FLSA, and the Code of Federal Regulations  
 for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus.

1 & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute  
2 unfair competition, including restitution of wages wrongfully withheld.

3 45. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
4 unfair in that these practices violate public policy, were immoral, unethical, oppressive,  
5 unscrupulous or substantially injurious to employees, and were without valid justification or  
6 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
7 17203 of the California Business & Professions Code, including restitution of wages wrongfully  
8 withheld.

9 46. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
10 fraudulent in that DEFENDANT's uniform policy and practice failed to pay PLAINTIFF, and  
11 other members of the CALIFORNIA CLASS, wages due for overtime hours worked, failed  
12 accurately to record the applicable rate of all overtime hours worked, and failed to provide the  
13 required amount of overtime compensation due to a systematic miscalculation of the overtime  
14 rate that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare  
15 Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this  
16 Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203,  
17 including restitution of wages wrongfully withheld.

18 47. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
19 unfair and deceptive in that DEFENDANT's employment practices caused the PLAINTIFF and  
20 the other members of the CALIFORNIA CLASS to be underpaid during their employment with  
21 DEFENDANT.

22 48. By and through the unlawful and unfair business practices described herein,  
23 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and  
24 the other members of the CALIFORNIA CLASS, including earned wages for all overtime hours  
25 worked, and has deprived them of valuable rights and benefits guaranteed by law and contract,  
26 all to the detriment of these employees and to the benefit of DEFENDANT so as to allow  
27 DEFENDANT to unfairly compete against competitors who comply with the law.

28 49. All the acts described herein as violations of, among other things, the Industrial

1 Welfare Commission Wage Orders, the California Code of Regulations, the California Labor  
 2 Code, the FLSA, the Code of Federal Regulations, and the related Opinions of the Department  
 3 of Labor, were unlawful and in violation of public policy, were immoral, unethical, oppressive  
 4 and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive  
 5 business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

6 50. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,  
 7 and do, seek such relief as may be necessary to restore to them the money and property which  
 8 DEFENDANT has acquired, or of which the PLAINTIFF and the other members of the  
 9 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and  
 10 unfair business practices, including earned but unpaid wages for all hours worked.

11 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
 12 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair  
 13 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from  
 14 engaging in any unlawful and unfair business practices in the future.

15 52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,  
 16 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices  
 17 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated.  
 18 As a result of the unlawful and unfair business practices described herein, the PLAINTIFF and  
 19 the other members of the CALIFORNIA CLASS have suffered and will continue to suffer  
 20 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to  
 21 engage in these unlawful and unfair business practices.

## 22 **SECOND CAUSE OF ACTION**

23 **For Failure To Pay Overtime Compensation**

24 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**  
 26 **Defendants)**

27 53. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
 28



1 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs  
2 1 through 52 of this Complaint.

3 54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
4 bring a claim for DEFENDANT's willful and intentional violations of the California Labor  
5 Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to  
6 accurately calculate the applicable rates for all overtime hours worked by PLAINTIFF and other  
7 member of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly  
8 compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime hours  
9 worked, including, work performed in excess of eight (8) hours in a workday and forty (40)  
10 hours in any workweek.

11 55. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and  
12 public policy, an employer must timely pay its employees for all hours worked.

13 56. Cal. Lab. Code § 510 further provides that employees in California shall not be  
14 employed more than eight (8) hours per workday and more than forty (40) hours per workweek  
15 unless they receive additional compensation beyond their regular wages in amounts specified  
16 by law.

17 57. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,  
18 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.  
19 Code § 1198 further states that the employment of an employee for longer hours than those  
20 fixed by the Industrial Welfare Commission is unlawful.

21 58. DEFENDANT maintained a uniform wage practice of paying the PLAINTIFF  
22 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the  
23 correct applicable overtime rate for the number of overtime hours they worked. As set forth  
24 herein, DEFENDANT's uniform policy and practice was to unlawfully and intentionally deny  
25 timely payment of wages due for the overtime hours worked by the PLAINTIFF and the other  
26 members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact failed to pay  
27 these employees the correct applicable overtime wages for all overtime hours worked.

28 59. DEFENDANT's uniform pattern of unlawful wage and hour practices

1 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a  
2 whole, as a result of implementing a uniform policy and practice that denied accurate  
3 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
4 CLASS for all overtime hours worked, including, the work performed in excess of eight (8)  
5 hours in a workday and forty (40) hours in any workweek.

6 60. In committing these violations of the California Labor Code, DEFENDANT  
7 inaccurately calculated the applicable overtime rates and consequently underpaid the actual  
8 hours worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.  
9 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other  
10 benefits in violation of the California Labor Code, the Industrial Welfare Commission  
11 requirements and other applicable laws and regulations.

12 61. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,  
13 the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not  
14 receive full compensation for all overtime hours worked.

15 62. Cal. Lab. Code § 515 sets out various categories of employees who are exempt  
16 from the overtime requirements of the law. None of these exemptions are applicable to the  
17 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, the  
18 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS are not subject  
19 to a valid collective bargaining agreement that would preclude the causes of action contained  
20 herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of himself and the  
21 CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable,  
22 non-waiveable rights provided by the State of California.

23 63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, the PLAINTIFF and  
24 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for hours  
25 worked that they were entitled to, constituting a failure to pay all earned wages.

26 64. DEFENDANT failed to accurately pay the PLAINTIFF and the other members  
27 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the hours they worked which  
28 were in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510,

1 1194 & 1198, even though the PLAINTIFF and the other members of the CALIFORNIA  
2 LABOR SUB-CLASS were regularly required to work, and did in fact work, overtime hours  
3 as to which DEFENDANT failed to accurately record and pay using the applicable overtime  
4 rate as evidenced by DEFENDANT's business records and witnessed by employees.

5 65. By virtue of DEFENDANT's unlawful failure to accurately pay all earned  
6 compensation to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
7 CLASS for the true number of hours they worked, the PLAINTIFF and the other members of  
8 the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an  
9 economic injury in amounts which are presently unknown to them and which will be ascertained  
10 according to proof at trial.

11 66. DEFENDANT knew or should have known that the PLAINTIFF and the other  
12 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their  
13 overtime hours worked. DEFENDANT systematically elected, either through intentional  
14 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of uniform  
15 company policy, practice and procedure, and DEFENDANT perpetrated this systematic scheme  
16 by refusing to pay the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-  
17 CLASS the applicable overtime rate.

18 67. In performing the acts and practices herein alleged in violation of California labor  
19 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for  
20 all hours worked and provide them with the requisite overtime compensation, DEFENDANT  
21 acted and continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF  
22 and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and  
23 utter disregard for their legal rights, or the consequences to them, and with the despicable intent  
24 of depriving them of their property and legal rights, and otherwise causing them injury in order  
25 to increase company profits at the expense of these employees.

26 68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS  
27 therefore request recovery of all unpaid wages, including overtime wages, according to proof,  
28 interest, statutory costs, as well as the assessment of any statutory penalties against

1 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable  
 2 statutes. To the extent overtime compensation is determined to be owed to the CALIFORNIA  
 3 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT'S  
 4 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also  
 5 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought  
 6 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT'S  
 7 conduct as alleged herein was willful, intentional and not in good faith. Further, the  
 8 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and  
 9 recover statutory costs.

### 10 **THIRD CAUSE OF ACTION**

11 **For Failure to Provide Accurate Itemized Statements**

12 **[Cal. Lab. Code § 226]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**

14 **Defendants)**

15 69. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
 16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs  
 17 1 through 68 of this Complaint.

18 70. Cal. Labor Code § 226 provides that an employer must furnish employees with  
 19 an "accurate itemized" statement in writing showing:

20 (1) gross wages earned,

21 (2) total hours worked by the employee, except for any employee whose compensation  
 22 is solely based on a salary and who is exempt from payment of overtime under  
 23 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
 24 Commission,

25 (3) the number of piecerate units earned and any applicable piece rate if the employee  
 26 is paid on a piece-rate basis,

27 (4) all deductions, provided that all deductions made on written orders of the employee  
 28 may be aggregated and shown as one item,

1 (5) net wages earned,

2 (6) the inclusive dates of the period for which the employee is paid,

3 (7) the name of the employee and his or her social security number, except that by  
4 January 1, 2008, only the last four digits of his or her social security number or an  
5 employee identification number other than a social security number may be shown on  
6 the itemized statement,

7 (8) the name and address of the legal entity that is the employer, and

8 (9) all applicable hourly rates in effect during the pay period and the corresponding  
9 number of hours worked at each hourly rate by the employee.

10 71. At all times relevant herein, DEFENDANT violated Cal. Lab. Code § 226 in  
11 that DEFENDANT failed to provide an accurate wage statement in writing that properly and  
12 accurately itemized the effective overtime rates of pay for overtime hours worked by the  
13 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and thereby  
14 also failed to set forth the correct overtime wages earned by the employees.

15 72. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.  
16 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the  
17 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs  
18 expended calculating the correct rates for the overtime hours worked and the amount of  
19 employment taxes which were not properly paid to state and federal tax authorities. These  
20 damages are difficult to estimate. Therefore, the PLAINTIFF and the other members of the  
21 CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars  
22 (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars  
23 (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in  
24 an amount according to proof at the time of trial (but in no event more than four thousand  
25 dollars (\$4,000.00) for the PLAINTIFF and each respective member of the CALIFORNIA  
26 LABOR SUB-CLASS herein).

27 ///

28 ///

**FOURTH CAUSE OF ACTION**

**For Failure to Pay Wages When Due**

**[ Cal. Lab. Code §§ 201, 202, 203]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)**

73. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 72 of this Complaint.

74. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

75. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

76. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

77. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

78. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction,



1 in accordance with Sections 201, 201.5, 202, and 205.5, any wages of  
 2 an employee who is discharged or who quits, the wages of the  
 3 employee shall continue as a penalty from the due date thereof at the  
 same rate until paid or until an action therefor is commenced; but the  
 wages shall not continue for more than 30 days.

4 79. The employment of many CALIFORNIA LABOR SUB-CLASS Members  
 5 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

6 80. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
 7 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,  
 8 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of  
 9 termination for all employees who terminated employment during the CALIFORNIA LABOR  
 10 SUB-CLASS PERIOD and demands an accounting and payment of all wages due, plus interest  
 11 and statutory costs as allowed by law.

#### 12 **FIFTH CAUSE OF ACTION**

13 **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

14 **(By PLAINTIFF and the COLLECTIVE CLASS against DEFENDANT)**

15 81. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and  
 16 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 80 of this  
 17 Complaint.  
 18

19 82. DEFENDANT is engaged in communication, business, and transmission between  
 20 the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

21 83. The PLAINTIFF further brings the Fifth Cause of Action on behalf of a  
 22 COLLECTIVE CLASS in accordance with 29 U.S.C. § 216 defined as all persons who are or  
 23 were previously employed by DEFENDANT in the United States as non-exempt employees and  
 24 who received bonus payments during the same pay period in which they were paid overtime  
 25 compensation (the "COLLECTIVE CLASS") at any time during the period three (3) years prior  
 26 to the filing of the Complaint and ending on the date as determined by the Court (the  
 27 "COLLECTIVE CLASS PERIOD").

28 84. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful

1 violations of the FLSA.

2 85. 29 U.S.C. § 207(a)(1) provides in pertinent part:

3 Except as otherwise provided in this section, no employer shall employ  
4 any of his employees who in any workweek is engaged in commerce or in  
5 the production of goods for commerce, or is employed in an enterprise  
6 engaged in commerce or in the production of goods for commerce, for a  
7 workweek longer than forty hours unless such employee receives  
8 compensation for his employment in excess of the hours above specified  
9 at a rate not less than one and one-half times the regular rate at which he  
10 is employed.

11 86. For purposes of calculating overtime pay, 29 U.S.C. § 207(e) provides, in relevant  
12 part, that the "regular rate" of pay shall not include:

13 (1) sums paid as gifts; payments in the nature of gifts made at Christmas  
14 time or on other special occasions, as a reward for service, the amounts of  
15 which are not measured by or dependent on hours worked, production, or  
16 efficiency;

17 (2) payments made for occasional periods when no work is performed due  
18 to vacation, holiday, illness, failure of the employer to provide sufficient  
19 work, or other similar cause; reasonable payments for traveling expenses,  
20 or other expenses, incurred by an employee in the furtherance of his  
21 employer's interests and properly reimbursable by the employer; and other  
22 similar payments to an employee which are not made as compensation for  
23 his hours of employment;

24 (3) Sums paid in recognition of services performed during a given period  
25 if either, (a) both the fact that payment is to be made and the amount of the  
26 payment are determined at the sole discretion of the employer at or near  
27 the end of the period and not pursuant to any prior contract, agreement, or  
28 promise causing the employee to expect such payments regularly; or (b)  
the payments are made pursuant to a bona fide profit-sharing plan or trust  
or bona fide thrift or savings plan, meeting the requirements of the  
Administrator set forth in appropriate regulations which he shall issue,  
having due regard among other relevant factors, to the extent to which the  
amounts paid to the employee are determined without regard to hours of  
work, production, or efficiency; or (c) the payments are talent fees (as  
such talent fees are defined and delimited by regulations of the  
Administrator) paid to performers, including announcers, on radio and  
television programs;

29 87. The bonus compensation awarded to the PLAINTIFF and other members of  
30 the COLLECTIVE CLASS was not a gift given as a reward for the PLAINTIFF's and  
31 COLLECTIVE CLASS Members' service to DEFENDANT that was not measured on their  
32 production, was not a payment made to PLAINTIFF and other members of the  
33 COLLECTIVE CLASS during a period in which these employees performed no work, and

1 was not a sum paid to the PLAINTIFF and other members of the COLLECTIVE CLASS at  
2 the sole discretion of DEFENDANT as to the timing of the payment and as to the amount to  
3 which the payment totaled. Instead, the bonus compensation awarded to PLAINTIFF and  
4 other members of the COLLECTIVE CLASS was a non-discretionary wage that was  
5 directly proportional to the work performed by these employees for DEFENDANT and was  
6 announced to the PLAINTIFF and COLLECTIVE CLASS Members to encourage these  
7 employees to work more efficiently and was awarded based on these employees' production  
8 during the applicable bonus pay period. As a result, the bonus wage awarded to  
9 PLAINTIFF and other members of the COLLECTIVE CLASS must be included in the  
10 regular rate of pay for the purposes of calculating the correct overtime rate due to the  
11 PLAINTIFF and other members of the COLLECTIVE CLASS.

12 88. DEFENDANT failed and still fails to include the bonus compensation as part  
13 of the PLAINTIFF's and other COLLECTIVE CLASS Members' "regular rate of pay" for  
14 the purposes of calculating overtime pay due to these employees. For the reasons set forth  
15 herein, the bonus compensation received by the PLAINTIFF and members of the  
16 COLLECTIVE CLASS should be included in their "regular rate of pay." The failure to do  
17 so resulted in a systematic and illegal underpayment of overtime compensation to  
18 PLAINTIFF and other members of the COLLECTIVE CLASS.

19 89. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the  
20 PLAINTIFF and the other members of the COLLECTIVE CLASS are entitled to overtime  
21 compensation for all overtime hours actually worked, at a rate not less than one and one-half  
22 times their regular rate of pay for all hours worked in excess of forty (40) hours in any  
23 workweek. DEFENDANTS' failure to correctly calculate overtime wages as required by  
24 federal law was willful and not in good faith.

25 90. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other  
26 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a workweek.

27 91. At all relevant times, DEFENDANT failed to include the bonus compensation  
28

1 in the regular rate of pay for the PLAINTIFF and the COLLECTIVE CLASS resulting in an  
 2 illegal underpayment of overtime compensation during the COLLECTIVE CLASS  
 3 PERIOD. Thus, DEFENDANT failed to pay the PLAINTIFF, and other members of the  
 4 COLLECTIVE CLASS, overtime compensation for the hours they have worked in excess of  
 5 the maximum hours permissible by law as required by § 207 of the FLSA, even though the  
 6 PLAINTIFF, and the other members of the COLLECTIVE CLASS, were regularly required  
 7 to work, and did in fact work, overtime hours.

8 92. For purposes of the Fair Labor Standards Act, the employment practices of  
 9 DEFENDANT were and are uniform throughout the United States in all respects material to  
 10 the claims asserted in this Complaint.

11 93. As a result of DEFENDANT's failure to pay the correct overtime  
 12 compensation at the applicable overtime rate for overtime hours worked, as required by the  
 13 FLSA, the PLAINTIFF and the members of the COLLECTIVE CLASS were damaged in an  
 14 amount to be proved at trial.

15 94. Therefore, the PLAINTIFF demands that he and the members of the  
 16 COLLECTIVE CLASS be paid the correct overtime compensation as required by the FLSA  
 17 for every hour of overtime worked in any workweek for which the bonus wage was  
 18 awarded, plus interest and statutory costs as provided by law.

#### 19 20 PRAYER FOR RELIEF

21 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
 22 severally, as follows:

23 1. On behalf of the CALIFORNIA CLASS:

- 24 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
- 25 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 26 B) An order temporarily, preliminarily and permanently enjoining and restraining
- 27 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- 28 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully

1 withheld from compensation due to PLAINTIFF and the other members of the  
2 CALIFORNIA CLASS; and,

3 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid  
4 fund for restitution of the sums incidental to DEFENDANT's violations due to  
5 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

6 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

7 A) That the Court certify the Second, Third, and Fourth Causes of Action asserted  
8 by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal.  
9 Code of Civ. Proc. § 382;

10 B) Compensatory damages, according to proof at trial, including compensatory  
11 damages for compensation due PLAINTIFF and the other members of the  
12 CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA  
13 LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

14 C) The wages of all terminated employees in the CALIFORNIA LABOR  
15 SUB-CLASS as a penalty from the due date thereof at the same rate until paid  
16 or until an action therefore is commenced, in accordance with Cal. Lab. Code  
17 § 203; and,

18 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay  
19 period in which a violation occurs and one hundred dollars (\$100) per each  
20 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a  
21 subsequent pay period, not exceeding an aggregate penalty of four thousand  
22 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

23 3. On behalf of the COLLECTIVE CLASS:

24 A) That the Court certify the Fifth Cause of Action asserted by the  
25 COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);

26 B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and  
27 procedures complained of herein violated provisions of the Fair Labor  
28 Standards Act; and,

1 C) That the PLAINTIFF and the other members of the COLLECTIVE CLASS  
2 recover compensatory damages and an equal amount of liquidated damages as  
3 provided under the law and in 29 U.S.C. § 216(b).

4 4. On all claims:

- 5 A) An award of interest, including prejudgment interest at the legal rate;  
6 B) Such other and further relief as the Court deems just and equitable; and,  
7 C) An award of penalties and cost of suit, as allowable under the law.

8 Neither this prayer nor any other allegation or prayer in this Complaint is  
9 to be construed as a request, under any circumstance, that would result in  
10 a request for attorneys' fees or costs available under Cal. Lab. Code §  
11 218.5.

12 Dated: August 1, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

14 By:   
15 Norman B. Blumenthal  
16 Attorneys for Plaintiff



**DEMAND FOR A JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: August 1, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

Norman B. Blumenthal  
Attorneys for Plaintiff

K:\DNDropbox\Pending Litigation\Wellpoint - Talamantez\JP-Complaint-FINAL.wpd

# EXHIBIT B

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Norman B. Blumenthal (Bar # 68687) Kyle Nordrehaug (Bar # 205975) Blumenthal, Nordrehaug & Bhowmik 2255 Calle Clara, La Jolla, CA 92037 TELEPHONE NO.: (858) 551-1223 FAX NO.: (858) 551-1232 ATTORNEY FOR (Name): Plaintiff Josue Talamantez		FOR COURT USE ONLY  <b>CONFORMED COPY</b> ORIGINAL FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES  AUG 03 2012  John A. Clarke, Executive Officer/Clerk By <u>                    </u> Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill St. MAILING ADDRESS: 111 N. Hill St. CITY AND ZIP CODE: Los Angeles 90012 BRANCH NAME: Central District, Stanley Mosk			
CASE NAME: <b>TALAMANTEZ v. THE WELLPOINT COMPANIES</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)		<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> <b>Counter</b>		<input type="checkbox"/> <b>Joinder</b>	
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: <b>BC 489001</b>	
JUDGE:		DEPT:	

Items 1-6 below must be completed (see instructions on page 2)

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties      d. ☒ Large number of witnesses
- b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve      e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☒ Substantial amount of documentary evidence      f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary      b. ☒ nonmonetary; declaratory or injunctive relief      c. ☐ punitive

4. Number of causes of action (specify): FIVE (5)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 1, 2012

Norman B. Blumenthal

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SHORT TITLE: <b>TALAMANTEZ v. THE WELLPOINT COMPANIES</b>	CASE NUMBER <b>BC 489001</b>
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**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 7 ☐ HOURS/ ☒ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column B below which best describes the nature of this case

**Step 3:** In Column C, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |  |  |
|--|--|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in central (other county, or no bodily injury/property damage).  | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.   | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                       | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                     | 10. Location of Labor Commissioner Office                  |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (48)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
<b>Other Personal Injury/Property Damage/ Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress		1., 3.	
<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1., 4.	

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SHORT TITLE: <b>TALAMANTEZ v. THE WELLPOINT COMPANIES</b>	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	① 2., 3. 10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
	<del>Eminent Domain/Inverse Condemnation (14)</del>	<del><input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____</del>	<del>2.</del>
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
	Unlawful Detainer		
Unlawful Detainer	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

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SHORT TITLE: <b>TALAMANTEZ v. THE WELLPOINT COMPANIES</b>	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
		<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
		<input type="checkbox"/> <del>A6040 Injunctive Relief Only (not domestic/harassment)</del>	2., 8.
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.		
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
		<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
		<input type="checkbox"/> A6190 Election Contest	2.
		<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
<input type="checkbox"/> A6100 Other Civil Petition	2., 9.		

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SHORT TITLE: <b>TALAMANTEZ v. THE WELLPOINT COMPANIES</b>	CASE NUMBER
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**Item III. Statement of Location:** Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

<b>REASON:</b> Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case.  <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			<b>ADDRESS:</b>  Class action brought against company doing business in Los Angeles County
<b>CITY:</b> Los Angeles	<b>STATE:</b> CA	<b>ZIP CODE:</b> 91367	

**Item IV. Declaration of Assignment:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Staley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: 8/1/12

  
(SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT - CLASS ACTION CASES**

Case Number BC 489001

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.3(c)).

ASSIGNED JUDGE	DEPT	ROOM
Judge Elihu M. Berle	323	1707
Judge Kenneth Freeman	322	1702
Judge William F. Highberger	307	1402
Judge Jane Johnson	308	1415
Judge Anthony J. Mohr	309	1409
Judge John Shepard Wiley, Jr.	311	1408
OTHER		

**Instructions for handling Class Action Civil Cases**

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

**APPLICATION**

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

**PRIORITY OVER OTHER RULES**

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

**CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

**TIME STANDARDS**

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

**FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

**SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ JOHN A. CLARKE, Executive Officer/Clerk

By \_\_\_\_\_, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

**What is ADR:**

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

**Mediation:**

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

**Cases for Which Mediation May Be Appropriate**

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

**Cases for Which Mediation May Not Be Appropriate**

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

**Arbitration:**

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

**Cases for Which Arbitration May Be Appropriate**

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

**Cases for Which Arbitration May Not Be Appropriate**

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

**Neutral Evaluation:**

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

**Cases for Which Neutral Evaluation May Be Appropriate**

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

**Cases for Which Neutral Evaluation May Not Be Appropriate**

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

**Settlement Conferences:**

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

**LOS ANGELES SUPERIOR COURT ADR PROGRAMS****CIVIL:**

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.890-3.898 Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

**FAMILY LAW (non-custody):**

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

**PROBATE:**

- **Mediation**
- **Settlement Conference**

**NEUTRAL SELECTION**

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

**COURT ADR PANELS**

- Party Select Panel** The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Random Select Panel** The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Private Neutral** The market rate for private neutrals can range from \$300-\$1,000 per hour.

**ADR ASSISTANCE**

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

COURT	ADDRESS	ZIP	CITY, CA	PHONE	FAX
Antelope	42011 4th St. West	None	Lancaster, CA 93534	(661)974-7275	(661)974-7060
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8585	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)603-3072	(310)223-0337
Glendale	600 E. Broadway	273	Glendale, CA 91206	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	316	Long Beach, CA 90802	(562)491-6272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)356-5685	(626)666-1774
Pomona	400 Civic Center Plaza	106	Pomona, CA 91766	(909)620-3183	(909)629-6283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-6151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)260-1829	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-5425	(213)633-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7326
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program

A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office.



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

**Information About Alternative Dispute Resolution:**

California Rules of Court, rule 3.221, requires counties participating in the Dispute Resolution Programs Act ("DRPA"), to provide information about the availability of local dispute resolution programs funded under DRPA. In Los Angeles County, these services are made possible through major support from the Los Angeles County Department of Community and Senior Services through DRPA. The list of the local dispute resolution programs funded in Los Angeles County is set forth below.

Superior Court of California, Los Angeles County, ADR Office (213) 974-5425  
[www.lasuperiorcourt.org/ADR](http://www.lasuperiorcourt.org/ADR)

**Staff and volunteers of the following identified agencies are not employees of the Los Angeles Superior Court:**

Asian-Pacific American Dispute Resolution Center (213) 250-8190 [www.apadrc.org](http://www.apadrc.org)

California Academy of Mediation Professionals (818) 377-7250 [www.mediationprofessionals.org](http://www.mediationprofessionals.org)

California Lawyers for the Arts, Arbitration and Mediation Service (310) 998-5590 [www.calawyersforthearts.org/](http://www.calawyersforthearts.org/)

Center for Conflict Resolution (818) 705-1090 [www.ccr4peace.org](http://www.ccr4peace.org)

Inland Valleys Justice Center (909) 621-7479 [www.ivjc.org](http://www.ivjc.org)

Korean American Coalition 4.29 Center (213) 365-5999 [www.kacla.org](http://www.kacla.org)

Los Angeles City Attorney's Office Dispute Resolution Program (213) 485-8324  
[www.lacity.org/mediate](http://www.lacity.org/mediate)

Los Angeles County Bar Association Dispute Resolution Services  
(877) 473-7658 (323) 930-1841 (888) 922-1322 (562) 570-1019 [www.lacba.org/drs](http://www.lacba.org/drs)

Los Angeles County Department of Consumer Affairs (213) 974-0825

The Loyola Law School Center for Conflict Resolution (213) 736-1145 [www.lls.edu/ccr](http://www.lls.edu/ccr)

City of Norwalk Dispute Resolution Program (562) 929-5603  
[www.ci.norwalk.ca.us/socialservices2.asp](http://www.ci.norwalk.ca.us/socialservices2.asp)

***These programs do not offer legal advice or help you respond to a summons,  
but they can assist in resolving your problem through mediation.***

**Dispute Resolution Programs Act  
Contracts Administration Office: (213) 738-2621**

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS: Click on the button to select the appropriate court address.			
PLAINTIFF:			
DEFENDANT:			
STIPULATION TO PARTICIPATE IN ALTERNATIVE DISPUTE RESOLUTION (ADR)			CASE NUMBER:

The undersigned parties stipulate to participate in an Alternative Dispute Resolution (ADR) process in the above-entitled action, as follows:

- ☐ Mediation  
☐ Non-Binding Arbitration  
☐ Binding Arbitration  
☐ Early Neutral Evaluation  
☐ Settlement Conference  
☐ Other ADR Process (describe): \_\_\_\_\_

Dated: \_\_\_\_\_

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

☐ Additional signature(s) on reverse



Short Title	Case Number
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Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Name of Stipulating Party  
☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

## VOLUNTARY EFFICIENT LITIGATION STIPULATIONS

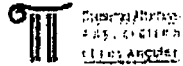


Superior Court of California  
County of Los Angeles

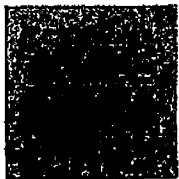


Los Angeles County  
Bar Association  
Litigation Section

Los Angeles County  
Bar Association Labor and  
Employment Law Section



Consumer Attorneys  
Association of Los Angeles



Southern California  
Defense Counsel



Association of  
Business Trial Lawyers



California Employment  
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

*The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.*

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association  
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION – EARLY ORGANIZATIONAL MEETING</b>			CASE NUMBER:

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, to discuss and consider whether there can be agreement on the following:
  - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
  - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
  - c. Exchange of names and contact information of witnesses;
  - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
  - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
  - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
  - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

SHORT TITLE:	CASE NUMBER:
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents not privileged or protected from disclosure, on which such computation is based;
  - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to \_\_\_\_\_ for the complaint, and \_\_\_\_\_ for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation.  
(INSERT DATE) (INSERT DATE)
  3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
  4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME) > \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION – DISCOVERY RESOLUTION</b>			CASE NUMBER:

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:

**a. The party requesting the Informal Discovery Conference will:**

- i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
- ii. Include a brief summary of the dispute and specify the relief requested; and
- iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.

**b. Any Answer to a Request for Informal Discovery Conference must:**

- i. Also be filed on the approved form (copy attached);
- ii. Include a brief summary of why the requested relief should be denied;

SHORT TITLE:	CASE NUMBER:
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- iii. Be filed within two (2) court days of receipt of the Request; and
  - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.

It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).

6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.



SHORT TITLE:	CASE NUMBER:
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**The following parties stipulate:**

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

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(ATTORNEY FOR PLAINTIFF)

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(ATTORNEY FOR DEFENDANT)

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(ATTORNEY FOR DEFENDANT)

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(ATTORNEY FOR DEFENDANT)

>

(ATTORNEY FOR \_\_\_\_\_)

>

(ATTORNEY FOR \_\_\_\_\_)

>

(ATTORNEY FOR \_\_\_\_\_)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>INFORMAL DISCOVERY CONFERENCE</b> (pursuant to the Discovery Resolution Stipulation of the parties)			CASE NUMBER:

- This document relates to:
  - ☐ Request for Informal Discovery Conference
  - ☐ Answer to Request for Informal Discovery Conference
2. Deadline for Court to decide on Request: \_\_\_\_\_ (insert date 10 calendar days following filing of the Request).
3. Deadline for Court to hold Informal Discovery Conference: \_\_\_\_\_ (insert date 20 calendar days following filing of the Request).
4. For a Request for Informal Discovery Conference, briefly describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, briefly describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
<b>STIPULATION AND ORDER – MOTIONS IN LIMINE</b>			CASE NUMBER:

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least \_\_\_\_ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
  - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
  - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

SHORT TITLE:	CASE NUMBER:
--------------	--------------

**The following parties stipulate:**

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)

> \_\_\_\_\_  
(ATTORNEY FOR PLAINTIFF)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR DEFENDANT)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

> \_\_\_\_\_  
(ATTORNEY FOR \_\_\_\_\_)

**THE COURT SO ORDERS.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDICIAL OFFICER

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/24/12

DEPT. 322

HONORABLE KENNETH R. FREEMAN

JUDGE

E. SABALBURO

DEPUTY CLERK

HONORABLE  
#3

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. PENNYSON, C.A.

Deputy Sheriff

NONE

Reporter

4:00 pm

BC489001

Plaintiff  
Counsel

JOSUE TALAMANTEZ

VS

Defendant  
Counsel

THE WELLPOINT COMPANIES INC

NO APPEARANCES

## NATURE OF PROCEEDINGS:

## COURT ORDER REGARDING NEWLY FILED CLASS ACTION

By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for October 10, 2012, at 2:00 p.m., in this department. At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation. The Court requests that parties file original and one courtesy copy of the Joint Initial Status Conference Class Action Response Statement in Department 322.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/24/12

DEPT. 322

HONORABLE KENNETH R. FREEMAN

JUDGE E. SABALBURO

DEPUTY CLERK

HONORABLE  
#3

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. TENNYSON, C.A.

Deputy Sheriff

NONE

Reporter

4:00 pm

BC489001

Plaintiff  
Counsel

JOSUE TALAMANTEZ

VS

Defendant  
Counsel

THE WELLPOINT COMPANIES INC

NO APPEARANCES

## NATURE OF PROCEEDINGS:

responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of Prejudice pursuant to Code of Civil Procedure Section 170.6.

According to Government Code Sections 70616(a) and 70616(b), each party shall pay a fee of \$1,000.00 to the Los Angeles Superior Court within 10 calendar days from this date.

The plaintiff must serve a copy of this minute order on all parties forthwith and file a Proof of Service in this department within seven days of service.

## CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served this Minute Order and the Court's Order upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 08/24/12

DEPT. 322

HONORABLE KENNETH R. FREEMAN

JUDGE

E. SABALBURO

DEPUTY CLERK

HONORABLE  
#3

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

T. TENNYSON, C.A.

Deputy Sheriff

NONE

Reporter

4:00 pm

BC489001

Plaintiff  
Counsel

JOSUE TALAMANTEZ

VS

Defendant  
Counsel

THE WELLPOINT COMPANIES INC

NO APPEARANCES

## NATURE OF PROCEEDINGS:

Dated: August 24, 2012

John A. Clarke, Executive Officer/Clerk

BY:

E. Sabalbuero

Norman B. Blumenthal  
BLUMENTHAL, NORDREHAUG & BHOWMIK  
2255 Calle Clara  
La Jolla, CA 92037

# EXHIBIT C

ORIGINAL FILED

AUG 24 2012

LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JOSUE TALAMANTEZ,

Plaintiff,

vs.

THE WELLPOINT COMPANIES, INC., et al.

Defendants.

Case No.: BC489001

INITIAL STATUS CONFERENCE ORDER  
(COMPLEX LITIGATION PROGRAM)

Case Assigned for All Purposes to  
Judge Kenneth R. Freeman

Department: 322

Date: October 10, 2012

Time: 2:00 PM

This case has been assigned for all purposes to Judge Kenneth R. Freeman in the Complex Litigation Program. An Initial Status Conference is set for October 10, 2012 at 2:00 PM. in Department 322 located in the Central Civil West Courthouse at 600 South Commonwealth Avenue, Los Angeles, California 90005. Counsel for all parties are ordered to attend.

The court orders counsel to prepare for the Initial Status Conference by identifying and discussing the central legal and factual issues in the case. Counsel for plaintiff is ordered to initiate contact with counsel for defense to begin this process. Counsel then must negotiate and agree, as possible, on a case management plan. To this end, counsel must file a Joint Initial Status Conference Class Action Response Statement five court days before the Initial Status Conference.

INITIAL STATUS CONFERENCE ORDER

1 The Joint Response Statement must be filed on line-numbered pleading paper and must  
 2 specifically answer each of the below-numbered questions. Do not the use the Judicial Council  
 3 Form CM-110 (Case Management Statement).

4 **1. PARTIES AND COUNSEL:** Please list all presently-named class representatives and  
 5 presently-named defendants, together with all counsel of record, including counsel's contact and  
 6 email information.

7 **2. POTENTIAL ADDITIONAL PARTIES:** Does any plaintiff presently intend to add  
 8 more class representatives? If so, and if known, by what date and by what name? Does any  
 9 plaintiff presently intend to name more defendants? If so, and if known, by what date and by what  
 10 name? Does any appearing defendant presently intend to file a cross-complaint? If so, who will  
 11 be named.  
 12

13 **3. IMPROPERLY NAMED DEFENDANT(S):** If the complaint names the wrong  
 14 person or entity, please explain.  
 15

16 **4. ADEQUACY OF PROPOSED CLASS REPRESENTATIVE(S):** If any party  
 17 believes one or more named plaintiffs might not be an adequate class representative, please  
 18 explain. No prejudice will attach to these responses.

19 **5. ESTIMATED CLASS SIZE:** Please discuss and indicate the estimated class size.

20 **6. OTHER ACTIONS WITH OVERLAPPING CLASS DEFINITIONS:** Please list  
 21 other cases with overlapping class definitions. Please identify the court, the short caption title, the  
 22 docket number, and the case status.  
 23

24 **7. POTENTIALLY RELEVANT ARBITRATION AND/OR CLASS ACTION**  
 25 **WAIVER CLAUSES:** Please include a sample of any clause of this sort. Opposing parties must  
 26 summarize their views on this issue.

27 **8. POTENTIAL EARLY CRUCIAL MOTIONS:** Opposing counsel are to identify and  
 28

1 describe the significant core issues in the case. Counsel then are to identify efficient ways to  
 2 resolve those issues. The vehicles include:

3 ■ **Motion to Compel Arbitration,**

4 ■ **Early motions in limine,**

5 ■ **Early motions about particular jury instructions and verdict forms,**

6 ■ **Demurrers,**

7 ■ **Motions to strike,**

8 ■ **Motions for judgment on the pleadings, and**

9 ■ **Motions for summary judgment and summary adjudication.**

10  
 11 **NOTE: Effective 2012, by stipulation a party may move for summary adjudication of**  
 12 **a legal issue or a claim for damages that does not completely dispose of a cause of action, an**  
 13 **affirmative defense, or an issue of duty<sup>1</sup>. Counsels are to analyze, discuss, and report on the**  
 14 **relevance of this powerful new procedure.**

15 **9. CLASS CONTACT INFORMATION:** Does plaintiff need class contact information  
 16 from the defendant's records? If so, do the parties consent to an "opt-out" notice process (as  
 17 approved in *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4<sup>th</sup> 554, 561) to  
 18 precede defense delivery of this information to plaintiff's counsel? If the parties agree on the  
 19 notice process, who should pay for it? Should there be a third-party administrator?

20  
 21 **10. PROTECTIVE ORDERS:** Parties considering an order to protect confidential  
 22 information from general disclosure should begin with the model protective orders found on the  
 23 Los Angeles Superior Court Website under "Civil Tools for Litigators."

24  
 25 **11. DISCOVERY:** Please discuss discovery. Do the parties agree on a plan? If not, can

26  
 27 <sup>1</sup>See Code Civ. Proc. § 437c, subd. (s)

1 the parties negotiate a compromise? At minimum, please summarize each side's views on  
 2 discovery. The court generally allows discovery on matters relevant to class certification, which  
 3 (depending on circumstances) may include factual issues also touching the merits. The court  
 4 generally does not permit extensive or expensive discovery relevant only to the merits (for  
 5 example, detailed damages discovery) unless a persuasive showing establishes early need. If any  
 6 party seeks discovery from absent class members, please estimate how many, and also state the  
 7 kind of discovery you propose<sup>2</sup>.

8  
 9 **12. INSURANCE COVERAGE:** Please state if (1) there is insurance for indemnity or  
 10 reimbursement, and (2) whether there are any insurance coverage issues which might affect  
 11 settlement.

12 **13. ALTERNATIVE DISPUTE RESOLUTION:** Please discuss ADR and state each  
 13 party's position about it. If pertinent, how can the court help identify the correct neutral and  
 14 prepare the case for a successful settlement negotiation?

15 **14. TIMELINE FOR CASE MANAGEMENT:** Please recommend dates and times for  
 16 the following:

- 17 ■ The next status conference,
- 18 ■ A schedule for alternative dispute resolution, if it is relevant,
- 19 ■ A filing deadline for the motion for class certification, and
- 20 ■ Filing deadlines and descriptions for other anticipated non-discovery motions.
- 21
- 22

23 **15. ELECTRONIC SERVICE OF PAPERS:** For efficiency the complex program  
 24 requires the parties in every new case to use a third-party cloud service, such as:

- 25 ■ Case Anywhere ([www.caseanywhere.com](http://www.caseanywhere.com)).
- 26

27 <sup>2</sup> See California Rule of Court, Rule 3.768.



1 ■ CaseHomePage ([www.casehomepage.com](http://www.casehomepage.com)), or

2 ■ Lexis-Nexis File & Serve ([www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve)).

3 Please agree on one and submit the parties' choice when filing the Joint Initial Status

4 Conference Class Action Response Statement. If there is agreement, please identify the vendor. If  
5 parties cannot agree, the court will select the vendor at the Initial Status Conference. Electronic  
6 service is not the same as electronic filing. Only traditional methods of filing by physical delivery  
7 of original papers or by fax filing are presently acceptable.

8 **Reminder When Seeking To Dismiss Or To Obtain Settlement Approval:**

9 "A dismissal of an entire class action, or of any party or cause of action in a class action, requires  
10 court approval. . . . Requests for dismissal must be accompanied by a declaration setting forth the  
11 facts on which the party relies. The declaration must clearly state whether consideration, direct or  
12 indirect, is being given for the dismissal and must describe the consideration in detail."<sup>3</sup> If the  
13 parties have settled the class action, that too will require judicial approval based on a noticed  
14 motion (although it may be possible to shorten time by consent for good cause shown).

15 Pending further order of this Court, and except as otherwise provided in this Initial Status  
16 Conference Order, these proceedings are stayed in their entirety. This stay shall preclude the  
17 filing of any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the  
18 Court; however, any defendant may file a Notice of Appearance for purposes of identification of  
19 counsel and preparation of a service list. The filing of such a Notice of Appearance shall be  
20 without prejudice to any challenge to the jurisdiction of the Court, substantive or procedural  
21 challenges to the Complaint, without prejudice to any affirmative defense, and without prejudice  
22 to the filing of any cross-complaint in this action. This stay is issued to assist the Court and the  
23

24  
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26  
27 <sup>3</sup> California Rule of Court, Rule 3.770(a)

1 parties in managing this "complex" case through the development of an orderly schedule for  
2 briefing and hearings on procedural and substantive challenges to the complaint and other issues  
3 that may assist in the orderly management of these cases. This stay shall not preclude the parties

4 from informally exchanging documents that may assist in their initial evaluation of the issues  
5 presented in this case, however shall stay all outstanding discovery requests.

6 Plaintiff's counsel is directed to serve a copy of this Initial Status Conference Order on  
7 counsel for all parties, or if counsel has not been identified, on all parties, within five (5) days of  
8 service of this order. If any defendant has not been served in this action, service is to be completed  
9 within twenty (20) days of the date of this order.  
10

11 Dated: August 24, 2012

12  
13 **KENNETH R. FREEMAN**

14 Judge Kenneth R. Freeman  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
 3 ) ss  
 4 COUNTY OF LOS ANGELES )

5 I am a resident of the State of California, over the age of eighteen years, and not a party  
 6 to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles,  
 7 California 90067-3021. On September 18, 2012, I served the within documents: **NOTICE OF  
 8 REMOVAL**

9 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon  
 10 fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.

11 ☐ by personally delivering the document(s) listed above to the person(s) at the  
 12 address(es) set forth below.

13 ☐ by placing the document(s) listed above, together with an unsigned copy of this  
 14 declaration, in a sealed Federal Express envelope with postage paid on account and  
 15 deposited with Federal Express at Los Angeles, California, addressed as set forth  
 16 below.

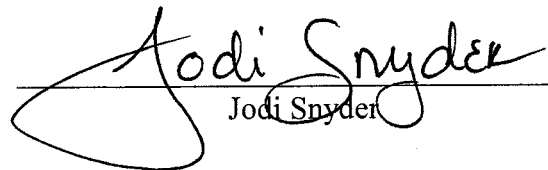
17 ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses  
 18 set forth below.

19 Blumenthal, Nordrehaug & Bhowmik  
 20 Norman B. Blumentahl  
 21 2255 Calle Clara  
 22 La Jolla, CA 92037  
 23 Tel: (858) 551-1223  
 24 Fax: (858) 551-1232

25 I am readily familiar with the firm's practice of collection and processing correspondence  
 26 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
 27 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
 28 motion of the party served, service is presumed invalid if postal cancellation date or postage  
 meter date is more than one day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose  
 direction the service was made.

Executed on September 18, 2012, at Los Angeles, California.

  
 Jodi Snyder

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge R. Gary Klausner and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

The case number on all documents filed with the Court should read as follows:

**CV12- 8058 RGK (JCx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

**I (a) PLAINTIFFS** (Check box if you are representing yourself ☐)  
JOSUE TALAMANTEZ, an individual, on behalf of himself and  
on behalf of all persons similarly situated,

**DEFENDANTS**  
THE WELLPOINT COMPANIES, INC., a Indiana Corporation; and  
Does 1 through 50, Inclusive

**(b) Attorneys** (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Blumenthal, Nordrehaug & Bhowmik  
Norman B. Blumentahl (SBN 068687)  
2255 Calle Clara  
La Jolla, CA 92037  
Telephone: (858) 551-1223

Attorneys (If Known)  
Seyfarth Shaw LLP  
David Kadue (SBN 113578)  
Colleen M. Regan (SBN 120284)  
2029 Century Park East, Suite 3500  
Los Angeles, CA 90067  
Telephone: (310) 277-7200

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** - For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. ORIGIN** (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

**CLASS ACTION** under F.R.C.P. 23: ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT: \$** \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. §1331 (FEDERAL QUESTION) 28 U.S.C. §1332 (DIVERSITY)

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input checked="" type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 863 DIWC/DIWW 405(g)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 891 Agricultural Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 240 Torts to Land				
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 245 Tort Product Liability				
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 290 All Other Real Property				
<input type="checkbox"/> 950 Constitutionality of State Statutes					

CV12-08058

**FOR OFFICE USE ONLY:** Case Number: \_\_\_\_\_

**AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.**

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	INDIANA

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

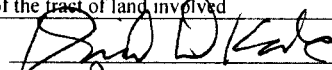
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

C. SIGNATURE OF ATTORNEY (OR PRO PER):

  
 David M. Kadue

Date September 18, 2012

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
 3 ) ss  
 4 COUNTY OF LOS ANGELES )

5 I am a resident of the State of California, over the age of eighteen years, and not a party  
 6 to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles,  
 7 California 90067-3021. On September 18, 2012, I served the within documents: **CIVIL**  
 8 **COVER SHEET**

9 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon  
 10 fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.

11 ☐ by personally delivering the document(s) listed above to the person(s) at the  
 12 address(es) set forth below.

13 ☐ by placing the document(s) listed above, together with an unsigned copy of this  
 14 declaration, in a sealed Federal Express envelope with postage paid on account and  
 15 deposited with Federal Express at Los Angeles, California, addressed as set forth  
 16 below.

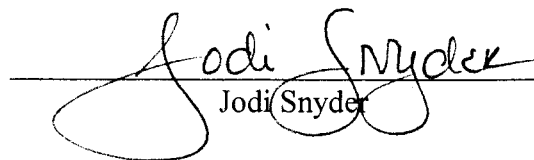
17 ☐ by transmitting the document(s) listed above, electronically, via the e-mail addresses  
 18 set forth below.

19 Blumenthal, Nordrehaug & Bhowmik  
 20 Norman B. Blumentahl  
 21 2255 Calle Clara  
 22 La Jolla, CA 92037  
 23 Tel: (858) 551-1223  
 24 Fax: (858) 551-1232

25 I am readily familiar with the firm's practice of collection and processing correspondence  
 26 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
 27 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
 28 motion of the party served, service is presumed invalid if postal cancellation date or postage  
 meter date is more than one day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose  
 direction the service was made.

Executed on September 18, 2012, at Los Angeles, California.

  
 Jodi Snyder